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April 11, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RICHARD R. GREEN
VICE PRESIDENT
DIRECTOR OF MANAGEMENT SERVICES

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**Re: Preemption of Nongovernmental Restrictions on Satellite
Earth Stations, IB Docket No. 95-59**

Dear Mr. Caton:

We write in response to the FCC's Report and Order and Further Notice of Proposed Rule making released on March 11, 1996, regarding preemption of certain local regulation of satellite earth station antenna, and proposing to prohibit enforcement of nongovernmental restrictions on such antennas that are less than one meter in diameter (the "FNPRM"). We enclose six (6) copies of this letter, in addition to the original.

As a Vice President, and a Director of Management Services for CB Commercial Real Estate Group, Inc., which is one of the largest full service commercial real estate services in North America, we manage over 115,000,000 square feet of commercial property. We have eighty Continental United States Offices. In Ohio, through our Team Ohio focus in Cleveland, Columbus and Cincinnati, we manage well over six and a half million square feet of commercial property for institutions, pension funds, and private investors.

Because one of my assignments is to manage a high-rise office tower in the suburbs which is the highest structure in the eastside of Cleveland, I have learned a number of lessons about roof-top antennas. I would like to share my concern with you.

LEASE

The prohibition of nongovernmental restrictions affects the status of existing leases between owners and tenants. Does the prohibition of restrictions eliminate the current covenants and restrictions in existing leases? If yes, is not this an unwarranted encroachment on the legal property rights of owners established in state law? If no, then do new leases after passage of the FCC rule require the elimination of restrictions? If this question is answered yes, then have we not set up two classes of tenant leases - before and after the FCC rule?

LIABILITY

The notion of the inability of the owners of a building, or their management agents, to control access and use on their roof is a direct assault on property rights, but of equal importance, it places the owner and management in a severe liability position.

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An antenna with a diameter of one yard (less than one meter), which is not properly attached to a building is a significant hazard to property and to life. If the Commission prohibits nongovernment restrictions, including an owners prohibition of affixing antennae to the building roof unless all its conditions are met, which may then prohibit users totally due to the nature of the building, will the Commission also provide liability insurance to all owners of buildings who will be sued when improper and unregulated attachments by their tenants damages other property or severely injures, or even kills an innocent passerby?

The second obvious liability is allowing anyone on one's roof without restrictions. Clearly, the prohibition of nongovernment restrictions will open up owners to the potential of litigation if there is any injury or any property damage from those who feel that they have the imprimatur from the FCC to do whatever they please in the installation of antennae without restriction.

ROOF WARRANTY

Most well run commercial buildings have roof warranties which protects the owner of the commercial building against leaks and resulting interior damage affecting tenants. The warranties usually have a time period in which the roof installer guarantees the integrity of the roof. The critical, and expensive, point is that only the roofer can penetrate the roof, and if anyone else does, then the warranty is void. Without building regulations and restrictive covenants of who will do work on the roof, there is no control of who will encroach on the roof, and thus warranties are potentially worthless. Will the Commission then undertake to guarantee all commercial roofing in the place of roofing warranties when unrestricted access for antennae is provided, even if the warranty does not allow penetrations, which may be the only means of attachment?

PARAPET

The roof parapet of a building is such that it is often the most visible and distinctive part of a commercial structure, and when weakened is the part of the building most likely to fall. It also is the most likely location to affix an antenna. The mandated unrestricted use of such parapets by antenna users through the FCC prohibition of any restrictions, not only mars the amenity of the building, and thus greatly affects the dollar market value of the building, but it also provides a great opportunity to cause severe structural damage to the building, and the potential for future liability, as holes are drilled for attachments without the ability of an owner to prohibit such activity due to the FCC rule.

The high-rise suburban building to which I made reference has fifty tenants. If each tenant requires a 3 foot dish antenna, a 150 foot antennae run will result, and considering the need for some space between, there would be an untenable parapet situation. Any architectural amenity of the building will be lost, and if the building is historic, the entire historic nature will be destroyed.

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WIRING AND ELECTRICITY

The prohibition of nongovernmental restrictions for roof antennae leads to the question of wiring. Will wiring be allowed penetrate the roof with all the potential problems discussed, and thus, in addition, affect the quite enjoyment of the tenant under the roof space who may not be the antenna user? What if the lease prohibits this penetration? Because the building owner or manager would have no ability to make restrictions as to factors of antenna accessibility, a series of serious tenant/landlord problems can be foreseen. Will the inability to control, allow a tenant to dangle wire on the outside of the building down to their space from the antenna location if there is no other route? Will such wiring thereby mar the exterior appearance of the building, and cause a nuisance to another tenant as unrestricted wiring runs past their window view? Will tenants be able to run wiring through building ducts to reach their space, if that is the only way to meet the antenna need? Without the ability of the owner to restrict such access, other requirements of the building operation may be severely hampered. Will such duct wiring inadvertently lead to indoor air quality problems to which the owner may be potentially liable to the other tenants, the EPA or OSHA?

Under the FCC proposed rule, can the owner restrict access and make rules and regulations to control the building telephone and/or electric closets? At what point can the owner say "no" in order to stop further encroachment because of overloaded conditions? Can the FCC assure that unrestricted access will not create conflicts with other tenants' lease rights? If it can not, then hasn't the FCC rule taken the owner's rights to control its own building away? Is this not a taking of property right by government rule without compensation or due process for each individual case?

For the reasons discussed in this letter, it appears that the FCC rule making regarding prohibition of private, nongovernmental restrictions on Satellite Earth Stations will severely affect property rights and owners value without any attempt to compensate them, thus providing a potential taking of a bundle of property rights without due process in each case, and without compensation. Further, notwithstanding the property rights issue, such an FCC rule will create untoward liability, monetary and value loss and legal problems to building owners, and will undermine legal rights under lease documents, rendering owners helpless in their own buildings and forcing them through governmental rule to potentially suffer great economic hardship.

We urge the FCC avoid this rule which strikes at the very heart of property rights and tenant/landlord relationships. Thank you for your attention to our firm's concerns.

Very truly yours,
CB Commercial Real Estate Group, Inc.


Richard R. Green
Vice President



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Local Knowledge Worldwide*

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Enclosed: Six copies

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